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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,033	12/01/2003	Oleg Shikhman	INE-0061D2	4729

23413 7590 08/21/2006

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EXAMINER
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SONNETT, KATHLEEN C

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 08/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/726,033

Applicant(s)

SHIKHMAN ET AL.

Examiner

Kathleen Sonnett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 1-5** are rejected under 35 U.S.C. 102(b) as being anticipated by Kolesa et al. (U.S. 5,462,558). Kolesa et al. discloses a surgical instrument comprising a handle assembly (200), a rod member (140) extending from a distal end of the handle assembly, and an adjustment screw (280) located within the handle assembly and upon a proximal end of the rod member, wherein length of the rod member outside of the handle assembly can be changed by the adjustment screw (col. 6 lines 2-12).
3. Regarding claim 2, the longitudinal axis of the rod member coincides with a longitudinal axis of the adjustment screw (see fig. 2 and 3).
4. Regarding claim 3, the adjustment screw includes a bore (282) through which a proximal end of the rod member is seated.
5. Regarding claim 4, the adjustment screw is contained within the handle assembly and is not accessible after manufacture of the surgical instrument, as the housing would have to be taken apart in order to access it.
6. Regarding claim 5, the adjustment screw includes internal threads that engage with external threads on the rod member as Kolesa et al. discloses that the proximal end of the rod

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member is threaded for screw-in engagement with the tapped bore (282) of the adjustment screw (col. 6 lines 6-12).

7. **Claims 1-3 and 5** are rejected under 35 U.S.C. 102(e) as being anticipated by Carignan et al. (U.S. 6,319,257). Carignan et al. discloses a surgical instrument comprising a handle assembly (16), a rod member (18) extending from a distal end of the handle assembly, and an adjustment screw (threaded portion of 46) located within the handle assembly and upon a proximal end of the rod member, wherein length of the rod member outside of the handle assembly can be changed by the adjustment screw (see abstract).

8. Regarding claim 2, the longitudinal axis of the rod member coincides with a longitudinal axis of the adjustment screw (see fig. 4).

9. Regarding claim 3, the adjustment screw includes a bore through which a proximal end of the rod member is seated (see Fig. 3 and 4).

10. Regarding claim 5, the adjustment screw includes internal threads that engage with external threads on the rod member (abstract lines 15-17).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen Sonnett whose telephone number is 571-272-5576. The examiner can normally be reached on 7:30-5:00, M-F, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCS  
8/8/2006



GLENN K. DAWSON  
PRIMARY EXAMINER